

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTORGolden Gate Avenue, Room 4181
San Francisco, CA 94102

ADDRESS REPLY TO:

P.O. Box 420603
San Francisco, CA 94142

January 25, 1993

James G. Lintern, Director
Center for Contract Compliance
1074 E. La Cadena, Suite 4
Riverside, CA 92501

Re: Calexico Airport Hangar (Our reference # 92-034)

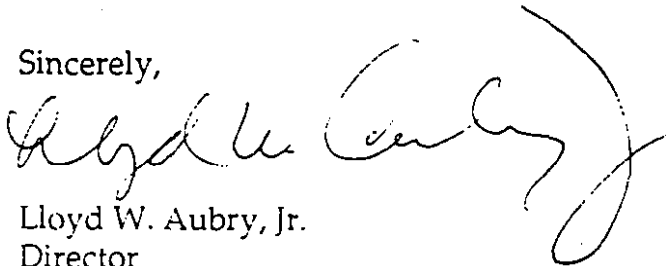
Dear Mr. Lintern:

This letter constitutes the Determination of the Director of the Department of Industrial Relations regarding coverage of the above named project under the public works laws and is made pursuant to statutory requirements. Based upon my review of the factual materials and the applicable laws and regulations pertaining to public works, it is my determination that this project is a public works within the meaning of the California Labor Code.

This project involved the demolition of damaged hangars and construction of replacement hangars, following a fire at the City of Calexico Airport. The loss was covered by an insurance policy issued to the City. The City opted to replace the hangars with the proceeds from the insurance policy rather than to accept cash value for the loss. Work on the project was performed in accordance with a building contract executed between the City of Calexico and Castillo Construction. The contract amount was within the total amount of proceeds payable to the City by its insurer, and provided for the construction of two hangars in addition to the existing insured structures. The City received a check from its insurer as partial payment of the damages payable to the City for replacement of the hangars which insurance funds were deposited into City accounts. Under the building contract, the City was obligated to, and did, make specified progress payments to the contractor upon the contractor's completion of specified phases of the project. The progress payments made to date by the City have been made from City accounts and equal the amount of the partial payment the City received from its insurer. The City instructed its insurer to hold the balance of insurance proceeds payable, pending resolution of this determination, at which time the insurer has been instructed to pay the outstanding balance directly to Castillo Construction in full satisfaction of the City's obligations under the building contract.

Under Labor Code section 1720(a) public works includes demolition and construction done under contract and paid for in whole or part with public funds. In this case, the City contracted directly with a private contractor for all work performed, successfully negotiated two additional hangars within the contract price which was determined by the insurance proceeds to be received, deposited the insurance proceeds into City accounts, and made progress payments to the contractor as specified phases of the project were completed. In view of these facts, the funds paid by the City of Calexico to Castillo Construction, either directly or at the City's instruction, for work performed by Castillo on this project constitute public funds.¹ Therefore, this project is a public works within the meaning of Labor Code section 1720(a) of the California Labor Code.

Sincerely,



Lloyd W. Aubry, Jr.
Director

cc: R.W. Stranberg, Chief Deputy Director
Jean Westgard, Chief--DLSR
Victoria Bradshaw, Labor Commissioner--DLSE
John Rea, Chief Counsel
Gail Jesswein, Chief--DAS
Dennis H. Morita, Interim General Counsel
Tom Heim, Esq.

VLH/gd:CalexAirport2(PW)

¹ Unlike PWCD Esperanz High School, 6/11/85; PWCD Bakersfield School District, 1/4/91, the City executed the construction contract directly with the contractor. The insurer herein did not, as in the other two cases, contract with the contractor, rebuild the structures and then turn them over to the City.